Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 10 of the Cable Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-258
	)	
	)	
Indecent Programming and Other Types of Materials on Cable Access Channels	)	

REPLY COMMENTS OF

DENVER AREA EDUCATIONAL TELECOMMUNICATIONS CONSORTIUM, INC.

ON NOTICE OF PROPOSED RULE MAKING

Denver Area Educational Telecommunications Consortium, Inc. ("DAETC")[1] hereby submits the following reply comments in the above-captioned proceeding.

Cable Operator Discretion and Indemnification

In their comments, certain cable operators have asked that the Commission grant them undue latitude in implementing Section 10 of the Cable Consumer Protection and Competition Act of 1992 ("1992 Act").

For instance, comments submitted by Cole, Raywid & Braverman ("Cole Raywid") on behalf of certain cable companies (Acton Corp., *et al*) asked the Commission to rely extensively on operator "judgment" in prohibiting indecent material on leased access channels. Cole Raywid asks the Commission to foreclose damages for operators' "good faith refusal" to carry offensive programming.[2] As well, Cole Raywid seeks to place cable operator decisions

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[1] As set forth in its Comments in this proceeding, DAETC is a non-profit corporation that programs leased access cable channels. DAETC's program service, known as The 90's Channel, appears 24 hours a day on eight cable systems serving over 500,000 subscribers.

[2] Acton Corp. *et al* at 2, 5.

beyond the bounds of Commission or court review.[3]

Far from implementing Section 10 of the 1992 Act in the narrowest possible fashion, these proposals would assign broad powers of censorship to private entities which have shown systemic hostility to leased access in general,[4] and insulate such entities' decisions from impartial review under law. Contrary to Cole Raywid's suggestion, the Commission must concern itself with the question of whether the content of barred programming is genuinely impermissible, rather than whether a cable operator has complied with a nebulous "good faith" standard.

DAETC strongly recommends that the Commission rule that operator decisions regarding the withholding of programming under Section 10 of the 1992 Act are subject to Commission review, and, through appeal, judicial review. We exhort the Commission not to protect operators from civil liability they incur as a result of refusing to transmit programming that is not legally prohibited. Clearly, to do otherwise is to eliminate risks in censoring programming, while leaving potential danger in transmission. It is not difficult to foresee that such incentives will favor censorship over expression.

Further, to adopt the proposals urged by Cole Raywid and certain other cable commentators is to undermine the principal intent of Congress in passing Section 612 of the Communications Act. As pointed out by The Alliance for Community Media, *et al*, the original and continuing purpose of Congress in Sections 611 and 612 of the Communications Act is to establish channels of speech which are beyond operator control[5]---a goal which directly contradicts Cole Raywid's proposals to give operators unbridled discretion over content.

Cost of Implementing Section 10 of the 1992 Act

Certain cable operators have asked that parties other than cable operators bear the expense of cable company implementation of Section 10 of

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[3] *Id*. at 4.

[4] See comments of DAETC at 4, 5.

[5] Comments of the Alliance for Community Media, *et al*, at p. 3.

the 1992 Act.[6] DAETC has searched the statute and legislative history in vain for any suggestion that others should bear the financial burden of implementation. As a non-profit entity with a limited budget, DAETC could well be forced out of business if required to pay for all or part of the implementation of Section 10 by a cable operator.[7] DAETC believes that given that the purpose of Section 612 is to expand the roster of speakers on cable television, it is not in the public interest to impose potentially fatal financial burdens on small leased access programmers.

Constitutionality of the Statute

As expressed in DAETC's comments in this rule making, DAETC believes the indecency provisions of Section 612 of the 1992 Act are unconstitutional. We note with some satisfaction that a broad spectrum of other commenters have expressed similar views. Nonetheless, DAETC acknowledges that the Commission must proceed with this rule making until the statute is stayed or overturned.

Respectfully submitted,

DENVER AREA EDUCATIONAL
TELECOMMUNICATIONS CONSORTIUM, INC.

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Dated: December 18, 1992

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[6] See Comments of Continental Cablevision at p. ii and those of Intermedia Partners at p. iii.

[7] The irony here is that if the Commission adopts the suggestions of the more extreme cable commentators, DAETC and other leased access providers could end up paying the cost of private censorship of programming which Congress did not intend to prohibit.